

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 196 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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COMMISSIONER OF INCOME TAX

Versus

SAURASHTRA BOTTLING PVT. LTD.

Appearance:

MR MIHIR JOSHI WITH MR MANISH R BHATT for Petitioner
MR SN SOPARKAR for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 23/02/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred
for the opinion of this Court the following questions

under Section 256(1) of the Income-tax Act, 1961.

For Assessment Year 1982-83

1. "Whether, the Appellate Tribunal is right in law and on facts in allowing depreciation at the rate of 100% on bottles and shells?

For Assessment Year 1983-84

1. "Whether, the Appellate Tribunal is right in law and on facts in allowing depreciation at the rate of 100% on bottles and shells?"
2. "Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to treat the sum of Rs. 1,74,251/- being expenses of painting of walls, boards, posters etc. as revenue expenditure?"

The question No.1 of Assessment Year 1982-83, which is also question No.1 for Assessment Year 83-84 is covered by a decision of this Court in assessee's own case in Income Tax Reference No. 206/85, which was decided on 13.2.98 by this Bench. It was held that bottles and shells since they were owned by the assessee and used as tools of their trade, were plant in respect of which depreciation could be claimed by the assessee. Since the value of each such plant was less than Rs. 750/-, depreciation was allowable at 100% as per the law that prevailed at the relevant time. for the same reasons as are given in our decision dated 13.2.98 while disposing of the Income Tax Reference No. 206/85, we hold that the Tribunal was right in allowing depreciation at the rate of 100% on bottles and shells, and answer the said question No.1 for both the Assessment Years 1982-83 and 1983-84, in the affirmative in favour of the assessee and against the Revenue.

The question No.2 pertains to a sum of Rs. 1,74,251/-, which the assessee claimed as expenses of painting of walls, boards, posters etc. as revenue expenditure. The ITO had disallowed the claim on the ground that it represent capital expenditure. In the appeal filed by the assessee, the CIT (Appeals), taking into account the fact that boards were supplied by the assessee to the dealers for displaying them in their shops and they were never returned and further that the paintings on the walls and posters did not create a capital asset, held that these could not be treated as

capital expenditure. The Tribunal after carefully considering the record found that these expenses were for the purpose of advertisement of the product of the assessee and no capital asset was creating nor any advantage of enduring benefit came into existence. In our opinion the Tribunal came to this finding on the basis of the material on record and the finding is legal and proper, since these expenses were as found by the Tribunal in fact incurred only for the purpose of advertising the products of the assessee. We therefore, hold that the Tribunal was right in directing the Assessing Officer to treat the sum of Rs. 1,74,251/as revenue expenditure, being expenses of paintings of walls, board, posters etc. The question No.2 aforesaid is therefore answered in the affirmative in favour of the assessee and against the Revenue. the reference stands disposed of accordingly with no order as to costs.

*/Mohandas